

GAHC040008172016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

WP(C) 550(AP) OF 2016

Petitioner:-

Shri Nyai Kamduk
S/o Late Kinya Kamduk
Permanent resident of Pakam Village,
P.O./P.S Aalo District West Siang,
Arunachal Pradesh.

-Versus-

Respondents:-

1. The State of Arunachal Pradesh represented by the Secretary/Commissioner, Land. Govt. of Arunachal Pradesh, Itanagar.
2. The Director, Department of Land Management, Govt. of Arunachal Pradesh, Itanagar, P.O./P.S, District Papumpare Itanagar, Arunachal Pradesh.
3. The Deputy Commissioner, Aalo, West Siang District, P.O./P.S Aalo, Arunachal Pradesh.

4. The District Revenue and Settlement Officer (DLRSO) Aalo, West Siang District, P.O./P.S Aalo, Arunachal Pradesh
5. Smti. DomilyPotom
W/o late MarcozyPotom,
Yeggo Village, P.O./P.S Aalo District West Siang, Arunachal Pradesh and presently holding the post of Joint Director in the Department of Urban Development and Housing, Govt. of Arunachal Pradesh.
6. ShriLemgoLoyi
S/o HilemLoyi
Resident of Pakam village, P.O./P.S. District West Siang, Arunachal Pradesh.

Advocate for the petitioner : Ms. N. Danggen
Advocate for the respondents : Mr. D. Kamduk, for Nos.1 & 2
: Ms. G. Ete, Addl.Sr. G.A for Nos. 3 & 4
: Mr. D. Boje for No.5

BEFORE
HON'BLE MR. JUSTICE MARLI YANKUNG

Date of Hearing : **28.06.2023**

Date of Judgment : **28.07.2023**

JUDGMENT & ORDER (CAV)

Heard Ms. N. Danggen, learned counsel for the petitioner.

Also heard Mr. D. Kamduk, learned Standing counsel for the Land Management Department representing the respondent Nos. 1 & 2, Ms. G. Ete, learned Additional Senior Government Advocate for the respondent Nos. 3 & 4 and Mr. D. Boje, learned counsel for the respondent No.5.

2.] This is a writ petition filed under Article 226 of the Constitution of India, wherein the legality and validity of the impugned order dated 10th June, 2013 is challenged, which was the approval for allotment of the disputed land at Yoji-Yora (Pakam) under Local Survey Plot No. 21 in favour of the private respondent No.5 and the impugned allotment order dated 29.04.2016, of the disputed land to the private respondent No.5.

3.] Ms. N. Danggen, learned counsel for the petitioner submits that the disputed plot of land i.e. Local Survey Plot No.21 located in the area called Yoji-Yora was donated by the villagers of Pakam. The petitioner's late father was one of the main donors of the said area for the establishment of Aalo town, for which a commendation certificate was also awarded to his late father. The

said area used to be occupied by Shastra Seema Bal (SSB), a para military force, however, after their relocation, sometime in the year 2002-03, the government had allotted some portion of the land to various individuals. The villagers of Pakam were of the belief that the land should be reverted back to them and therefore, they had filed a W.P.(C) 283 (AP) of 2005 the High Court. In its order dated 22.08.2005 the said writ petition was disposed of with a direction for the Deputy Commissioner to dispose of the representations of the villagers. Subsequently, the Deputy Commissioner vide an order dated 16.11.2005 rejected the representations of the villagers of Pakam, on the ground that there is no sufficient evidence that the land was not permanently donated to the Government. However, it was not disputed that the land of Yoji/Yora originally belonged to the villagers of Pakam. The appeal filed by the villagers was also rejected on the ground that there was no evidence that the land was not permanently donated by the villagers to the Government.

4.] The learned counsel for the petitioner submits that the

petitioner has been in occupation of the land in dispute and on 05.01.2004, he made an application for allotment of the disputed land under Yoji-Yora (Pakam area) which he had been occupying for the last two years. Against this application, a surveyed verification report was submitted, which stated that there is no structure or another proposer for the plot and the plot map dated 05.03.2004. Thereafter, a blanket eviction notice was issued by the Deputy Commissioner on 17.11.2009 for the eviction of the occupants within the area of 91314 Sqmts of area allotted to SBB along with the existing building till further order or are authorized to occupy the building of NHPC lying vacant, copy of the notice was also served upon the petitioner. However, ultimately, no eviction was carried out against the occupants. Thereafter the petitioner enquired about his application dated 05.01.2004 for the allotment of the land at Yoji-Yora, the petitioner was advised to submit a fresh representation as per the prescribed format. Thus on 05.09.2012, he submitted a fresh application as per the required format.

5.] The learned counsel submits that considering the above aspects, the petitioner had been expecting the allotment of the said plot of land, however, the impugned notification dated 10.06.2013 was issued, approving the allotment of the disputed land at Yoji-Yora to the private respondent No.5 and the petitioner was allotted another plot of land situated between Shiv Mandir and the plot of Shri Lemgo Loyi (respondent No.6). However, the petitioner found that the plot of land allotted to him was not humanly liveable. The learned counsel for the petitioner also submits that the respondent authorities were well aware of the fact that the plot of land allotted to the petitioner was not liveable since the whole area was occupied by Shiv Temple and by Shri Lemgo Loyi (respondent No.6).

The learned counsel further submits that being aggrieved, the petitioner had made a representation to the Deputy Commissioner vide a letter dated 8.11.2013, wherein he sought the redressal of his grievances and sought for the cancellation of the allotment/approval for allotment in respect of the said land to respondent No.5. Thereafter, the petitioner received summons for

purported hearings but no conclusive meeting was held nor any conclusive order passed. Thereafter, the petitioner sought information through R.T.I. and found out that in 1996 the respondent No.5, was allotted land of 350 Sq.mtrs at Upper Colony/Hikargumin/Gumin Nagar, However due to non-existence of the land, he had made an application in 4.6.2012 for the allotment of land located at Yogi-Yora area which he had identified and enclosed a rough sketched map. A site verification was made on 21.06.2012 and in the report it was mentioned that the office record shows that the petitioner has also applied for the same plot of land but no sign of occupation has been found on ground during the time of verification.

6.] The petitioner counsel further submits that the file notings would show that no hearing took place and the information through RTI also reveals that there was no order passed to conclude the claim in favour of the said Respondent No.5 on a hearing that took place on 29/10/2014. The learned counsel for the petitioner submits that the respondent authorities have, without coming to a conclusive finding simply allotted the disputed land to the private respondent No.5 on 29.04.2016. They ought to have at

least decided the claims of the petitioner on merits before doing so. That the Respondent No.5 neither belongs to Pakam area nor is he any land donor and the respondent authorities should have given preference to land owners of Pakam village like the petitioner himself.

7.] The learned counsel for the petitioner further submits that the usual practice in the matter of land allotment is, one has to inform about identified vacant govt. plot to the Land Management Department, by an applicant before Deputy Commissioner, and after such application, the verification of plot takes place by LM staff and Land Revenue Officer/LRSO. A person in occupation of the land is usually given preference and the petitioner is still under occupation of the disputed land at YojiYora (Pakam) under Local Survey Plot No. 21

8.] Ms. G. Ete, Addl. Sr.Govt. Advocate, learned counsel for the respondent No.3 & 4 on the other hand submits that the petitioner occupied the disputed plot since 2004 and the petitioner illegally attempted to occupy the plot by erecting a temporary shed but it was immediately removed as per eviction process. The

learned Addl. Sr.Govt. Advocate submits that initially a plot was approved for respondent No.5 somewhere at Upper Colony Aalo in 1993 vide Govt. approval No.LR-48/93 (Vol-I) dtd.03.07.1996 but the plot could not be physically allotted to him because the allotted area encroaches the portion of public road. Therefore in the interest of the public, the District Administration directed Land Management Branch to identify an alternative plot for the respondent No.5. Accordingly, a survey was conducted on the plot personally identified by the respondent No.5 whereupon after verification a report was submitted in 2014. It was that reported during survey and verification of said alternative plot No.21 no individual was found occupying the particular plot, no application was found pending in respect of the same plot, neither in respect of the present writ petitioner nor of some other person during verification. Therefore the plot was approved in favour of the respondent No.5 as an alternative plot since his name was already recommended by the Directorate of Land Management Govt. of A.P. in 1996.

9.] The learned counsel for the respondent no. further submits that the claim of the petitioner that he was in occupation of

the plot No.21 since 2004 is totally false and in his application form also there is no mention of the said particular plot. However, after the approval of the plot No.21 in favour of the respondent No.5 the petitioner submitted representations and in pursuance of his representation, hearing was conducted by Estate Officer and passed appropriate order directing the LM branch to clarify the dispute. That a plot vide No.29A situated in between Shiva Mandir of Yoji Yora and the plot of Shri Lemgo Loyi (Respondent No.6) has already been identified for the petitioner by the LM Branch and same is under process for allotment. Therefore the claim of the petitioner over the particular plot is not justified since the Dist.Adm. has also considered the right of the petitioner. That the hearing was conducted on 29.10.2014 in the office chamber of ADC-cum-Estate Officer, Aalo District West Siang, AP where both the parties were very much present and after hearing both the parties the order was passed.

10.] Mr. D. Boje, the learned counsel for the respondent No.5 also submits that the respondent No.5 had applied for allotment of land to the competent authority in the year 1993 and as per the

recommendation made by District Land Allotment Advisory Board (DLAAB), government approved land measuring 350 sq.mtrs. for residential purpose at Upper Colony, Aalo but due to the fault on the part of the government, final approval and allotment could not be done on the ground that the said earmarked plot falls under approach road. Thereafter, respondent No.5 had located a vacant plot situated at Yoji-Yora and applied the same for residential-cum-commercial alternate plot to the Deputy Commissioner, Aalo on 4.6.2012. The proposed alternate applied plot was properly verified by the staff/RK of the Land Management Department, Aalo. A site verification report dated 21.6.2012 was submitted to the Deputy Commissioner, Aalo which stated that there is no any signed of occupation found on the ground during the time of verification in the applied plot. In the meantime, respondent No.5 learnt that petitioner has also applied for allotment to the authority. The Land Management staff, Aalo after identifying the applied plots of both respondent No.5 and petitioner as well has separately prepared map for each plot. Petitioner never lodged any complaint when his case was considered for final approval for

allotment by the respondent authority in the year 2012. That the competent authority has recommended for final approval on dated 25th April, 2012 and final approval for allotment was issued on 10.06.2013.

11.] The learned counsel submits that at the time of application made by respondent No.5 for issuance of the plot of land at Yoji/Yora, the State respondents had taken the necessary steps by following the due procedure of law and on verification that the plot of land was vacant they had legally allotted the land to the respondent No.5 that the application made by the petitioner was also duly considered and she was given the land between the Shiv Temple and the respondent No 6. That it was the discretionary power of the authorities to make allotments of the land and the petitioner was given the plot of land as found proper by the Land Management Department. The learned counsel for the respondent No.5 further submits that since the land in question was permanently donated to the government by the villagers of Pakam area, as such, there are no such mandatory provisions/rules or report to show any legal right to the petitioner

for land allotment on compassionate ground. That the allotment of the land was the discretionary power of the authorities since there was no rules governing this matter and there was no rule that prior to allotment order any individual should be informed.

12.] Mr. D. Kamduk, learned Standing counsel for the Land Management Department representing the respondent Nos. 1 & 2 submits that he will be relying on the affidavit filed by the State respondents does not to wish to file any fresh counter affidavit.

13.] Having heard the submissions made by both the parties, it is seen that the fact that the landed area in dispute once belonged to Pakam Village which was donated to the Government by the villagers is not disputed. It is also an admitted fact that the petition was from Pakam Village and therefore the petitioner felt he had the right to be considered favourable when he applied for the disputed Plot no.21 which was within the Pakam Village area. It is also not disputed that the petitioner had occupied the disputed land in 2004 and he had made an application for allotment of the land and later on on 05.01.2004 and on 05.09.2012 he submitted a fresh application as per the

required format. However, the impugned notification 10.06.2013 was issued approving the allotment of the disputed plot to respondent no.5. When the petitioners approached the authorities he was given a landed property at plot vide No.29A between Shiv Mandir and the plot of Shri Lemgo Loyi (respondent No.6), which, the petitioner found was not humanly liveable. While the disputed land at Yoji Yora (Pakam) under Local Survey Plot No. 21 was issued in favour of respondent No.5.sincehe had applied for the disputed plot on 04.06.2012 and it was reported that no individual was found occupying the particular plot and no application was found pending in respect of the same plot. However, the evidence shows that the application of the petitioner dated 05.09.2012 was for the same plot of land. It is also submitted that the petitioner was occupying the disputed plot no.21 till date.

14.] From the submissions of the parties it is seen that there was no rule or procedure to be followed by the authorities while making allotments against the applications received, but it was the discretionary power of the competent authority since the land laws

of the state was silent on this aspect.

15.] In view of the above findings this court finds that considering the fact that the petitioner had made an application for allotment of the disputed plot of land at Yoji Yora (Pakam) under Local Survey Plot No. 21 since 05.01.2004 and subsequently on 05.09.2012 and the petitioner is also said to be occupying the said plot till date, the ends of justice will be met if the State Authorities re- explored the possibility of granting the application made by the petitioner for allotment of the disputed landed area. Meanwhile the impugned order dated 10.06.2013 which is the approval for allotment of the disputed land at Yoji Yora (Pakam) under Local Survey Plot No. 21 in favour of the private respondent No.5 and the allotment order dated 29.04.2016 to the private respondent No.5 is to be kept at abeyance. The State respondents may also explore the possibility of allotting the respondent no.5 or the petitioner alternative plots of land which is found liveable and acceptable, by giving both the parties a fair chance of being heard.

The Writ Petition(C) 550(AP) of 2016 according stands

disposed of .

JUDGE

Comparing Assistant